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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 715

H. J. BLACKFORD, ET AL.,
Petitioners,

vs.

LEGH R. POWELL, JR., ET AL.,
Respondents

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT AND BRIEF IN SUPPORT THEREOF

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

The petition of H. J. Blackford, W. V. A. Waterman, W. H. B. Simpson and Ed C. Wright,, respectfully shows unto this Honorable Court:

A

Summary Statement of the Matter Involved

The purpose of this petition is to have this Court review a decision (337) of the United States Circuit Court of Appeals for the Fourth Circuit, sustaining and affirming an order (4) of the District Court for the Eastern District of

Virginia, denying and dismissing the petition of H. J. Blackford seeking the payment of interest declared due and payable and a payment on account of principal due and unpaid of the Seaboard Air Line Railway Adjustment Mortgage 5% Gold Bonds, outstanding in the hands of the public (3).

Your petitioners are creditors of the Seaboard Air Line Railway Company now in Receivership instituted December 23rd, 1930, upon a creditors bill. The claims of the petitioners are evidenced by their respective holdings (1, 10, 16) of Adjustment Mortgage bonds of the Seaboard Air Line Railway Company issued under a mortgage indenture dated October 1, 1909, to secure the payment of the principal and interest of said bonds (6).

At the time of the appointment of the Receivers of the Railway Company funds amounting to $20,050.00 (2) were in the hands of paying agents for the payment of coupons #61 and #62 of the Adjustment bonds, dated August 1, 1925 representing the interest which had been declared due and payable but which said funds were paid over by the paying agents to the Receivers.

By decree of the District Court of December 10, 1943, the Plan of Reorganization, as modified, was affirmed (119). On appeal to the Circuit Court of Appeals for the Fourth Circuit that Court affirmed, under date of August 2, 1944, the lower court in *Badenhausen, et al.* v. *Guaranty Trust Co. et al.*, 145 Fed. (2) 40; (Cert. denied 323 U. S. 697). The Adjustment bonds were not parties to the appeal (191).

The Adjustment bonds were not represented at any time by the Trustee under the mortgage, nor by a committee of bondholders during the reorganization proceedings although there had been a committee in the early days of the receivership which committee ceased to function after 1935 (17).

There were ten underlying mortgage bonds on different parts of the Seaboard System and four general issue mortgages known as the First 4s, the Refunding 4s, the Adjustment 5s and the First and Consolidated 6s (6). These general mortgages rank in the order named, the first three cover just about all that the Seaboard possessed in the way of railroad property of approximately 4000 miles of the System. The Adjustment mortgage of the same date, October 1, 1909, as the Refunding was subordinate to the Refunding and covered the same property as the Refunding as well as all after-acquired property of the Seaboard. The First and Consolidated Mortgage, dated September 1, 1915 (25), purported to give a first mortgage lien on 408.96 miles of railroad (East Carolina Lines) which came into the Seaboard System under a merger dated October 11, 1915 (7). There were $65,915,000.00 of Refunding bonds deposited under this mortgage (23).

The Seaboard reorganization being in an Equity Court, was referred to a Special Master (134) who in his findings and conclusions denied to the Adjustment bonds any right to participate in the assets of the Seaboard on the theory that the Refunding bonds, being a superior lien, were not satisfied in full, and consequently under the rule of full or absolute payment for prior liens, as established by the decisions of this Court, the Adjustment bonds were not entitled to share in any way in the assets of the Seaboard (248, 251). The District Court followed this same line of reasoning and the Circuit Court of Appeals affirmed on appeal.

The complaint of the Adjustment bondholders is directed at the application, or, rather the misapplication, of this rule or principle of law as established by this Court and which grew out of the decision in the case of *Northern Pacific RR.* v. *Boyd* and came to be made absolute by later decisions in

cases involving the reorganization of railroads, principally, as well as other corporations.

It is the action of the United States Circuit Court of Appeals for the Fourth Circuit in its judgment of October 11, 1945 (337), affirming the United States District Court for the Eastern District of Virginia whose order or decree of April 27, 1945, (4) denying and dismissing the petition of H. J. Blackford for payment of certain interest declared due on Adjustment bonds and payment on account of principal of Seaboard Air Line Railway Adjustment Mortgage 5% Gold bonds, outstanding in the hands of the public, to the holders thereof upon presentation and surrender thereof, such amount per $1000 bond as the Court may find and deem proper, which your petitioners now ask this Court to review.

Reasons Assigned in Support of Petition

First. The petitioners should have their writ because a rule or principle of law growing out of and established by the decisions of this Honorable Court is invoked and sought to be applied in a manner so as to destroy the property rights of the Adjustment bondholders of the Seaboard Air Line Railway. And, this to the profit of a class of bondholders who have managed, controlled and dominated the reorganization of the Railroad since the inception of this consent receivership in a Court of Equity.

Second. Because in the application of a principle or rule of law as established by the decisions of this Honorable Court, that rule or principle of law has been twisted and misapplied so as to do an injustice to these petitioners and other holders of Adjustment bonds. In that the Adjustment bondholders' lien under their mortgage indenture was

prior in time and prior in right to the lien, if any, of the First and Consolidated 6s and, yet the latter took to the exclusion of the petitioners and other adjustment bondholders.

Third. The Trustee of the Refunding bonds raised in the receivership proceedings a question (21) as to the validity of the lien, if any, of the First and Consolidated mortgage, but the latter mortgage held $65,000,000.00 (23) of the Refunding bonds as collateral and the question was not litigated to a final conclusion but the First and Consolidated mortgage effected a compromise settlement (41) whereby the Refundings took a certain percentage and the First and Consolidated mortgage the balance of the assets involved. This compromise settlement was made by, *not* the Trustees of these two bond issues, (40) but by the respective committees for the two bonds and the allocation of securities of the new Seaboard followed the compromise settlement. And, because of this arrangement, the Refunding bonds took not pursuant to the rule of absolute priority, as established by the decisions of this Court, but under a compromise agreement (22) recognized and permitted under the decision of this Court in *Case* v. *Los Angeles Lumber Products Co.*, 308 U. S. 106.

Fourth. The decision of the Court below is one of grave importance to not only the petitioners, and all other holders of Adjustment bonds of the Seaboard, there being $2,500,000 of the issue in the hands of the public (14), but to the great number of bondholders of other corporate securities throughout the country and especially to those holders of railroad securities now in reorganization proceedings.

Fifth. The decision of the Court below, in refusing to give consideration to the cash funds arising from the large earn-

ings of the Railroad over the years 1940 to 1946, as a source out of which payment to a secured creditor can be made, is in direct conflict with the decision in the Tenth Circuit in the reorganization of the Denver and Rio Grande Western Railroad, holding that such funds (cash and current assets) while not required to be reflected in the capital structure, in the form of capitalized value, does not remove them from the picture and they must be taken into account in drawing up a fair and equitable plan of reorganization, and must be distributed in a manner that is fair and equitable to all classes of creditors. *In re Denver and Rio Grande Western RR.*, 150 Fed. 2nd, page 28, Advance Sheets, September 3, 1945.

Jurisdiction

This petition is submitted and review of the lower Court decision prayed pursuant to authority of Title 28 U. S. C. A. par. ~~237~~ 347 (a). (Judicial Code, Section ~~230~~ 240 amended.)

WHEREFORE, your petitioners pray that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Circuit Court of Appeals for the Fourth Circuit, commanding that court to certify and to send to this Court for its review and determination, on a day certain, to be therein named, a full and complete transcript of the record and all proceedings in said case entitled H. J. Blackford, et al., Appellants, *vs.* Legh R. Powell, Jr., et al., Appellees, in the cause of Guaranty Trust Company of New York, et al. *vs.* Seaboard Air Line Railway Company, Consolidated cause, and that the said decision of the Circuit Court of Appeals for the Fourth Circuit and every part thereof may be reviewed by this Honorable Court, and that said judgment may be reversed by this Honorable

Court, and that your petitioners may have such other and further relief in the premises as to this Honorable Court may seem meet and just.

And your petitioners will ever pray.

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Dated January 4, 1946.